

JUSTICE

Sentencers' understanding and treatment of problem gamblers



Commission on Crime & Problem Gambling

Key points

- Undertaken on behalf of the Commission on Crime and Problem Gambling, this research explores sentencers' awareness of and sentencing practice relating to a defendant's problem gambling.
- Gambling addiction is an internationally recognised mental health issue which negatively impacts thinking and behaviour. Training about the nuances of this neurocognitive distortion is needed in the criminal justice sector.
- Gambling advertising was identified as a pervasive issue in need of greater restrictions in line with strong public health messages.
- Just over half of magistrates who participated had not actively considered problem gambling in the context of a criminal case. They demonstrated a general awareness of gambling and how it might intersect with crime.
- Information about problem gambling is rarely introduced in the courtroom. Participants identified a lack of routine assessment by lawyers and probation staff. Stakeholders identified good practice where screening for problem gambling is undertaken in some police custody suites to inform court proceedings and treatment pathways.
- In some countries, problem gambling is regarded as a mitigating factor. Participants (magistrates and stakeholders) would welcome this approach in England and Wales, prioritising treatment in cases involving gambling-related crime. Reformed sentencing guidance and associated training was advocated.
- Magistrates acknowledged challenges in current sentencing options: the use of financial penalties in cases involving debt; limited bespoke treatment pathways; balancing justice for the victim with the benefit of treatment for the defendant; and the requirement to refer cases above the financial threshold to crown court (in spite of first offence or good character).

Background

The Gambling Act (2005) provides regulation for gambling in Great Britain and is currently under review (Department for Digital, Culture, Media and Sport, 2020). In 2019 the Howard League for Penal Reform launched the Commission on Crime and Problem Gambling which aimed to identify:

- What are the links between problem gambling and crime?
- What impact do these links have on communities and society?
- What should be done?

In 2020, the Commission on Crime and Problem Gambling published a research landscape on crime and problem gambling. This report highlighted concerns about the availability of treatment for problem gambling within the criminal justice system. Problem gambling is a recognised mental health disorder; gambling addiction is classified as a behavioural addiction in the Diagnostic and Statistical Manual of Mental Disorders [DSM-V] (American Psychiatric Association, 2013) and is classified in the World Health Organisation's International Classification of Diseases (WHO ICD, 2021). Problem gambling is also recognised as a public health concern (Abbott, 2020).

It has been widely recognised that more research is needed to understand the impact of problem gambling on people's decision-making processes. This would complement growing international evidence regarding the cognitive distortion that occurs when someone continues to gamble despite being in debt (Leeman and Potenza, 2012; Zhang and Clark, 2020; Goudriaan, 2020). Research has indicated that there is a relationship between problem gambling and engagement in crime, especially acquisitive crime when funds are exhausted, yet the person remains compelled to gamble (Smith and Simpson, 2014; Zhang and Clark, 2020). The Commission on Crime and Problem Gambling (2020: 19) highlighted a key consideration in sentencing in cases where problem gambling is identified, which is the relationship between the 'inability versus an unwillingness to self-regulate.'

Research into crown court records in England and Wales by Brooks and Blaszczyński

(2011) found that problem gambling was not regarded as a formal mitigating factor. They found that limited treatment was offered, even when psychiatric or medical evidence of gambling addiction was present. This is in contrast to the court system's approach to drug and alcohol related crime, legislated by the Crime and Disorder Act 1998, which introduced drug treatment and testing orders aimed at reducing drug use and associated crime (Naeem et al, 2007).

Courtroom attitudes to problem gambling differ in other jurisdictions. For example, in Canadian courts problem gambling is considered to be a mitigating factor because it is included in the DSM-V. Canadian defence teams also use expert witnesses to give evidence about dysfunctional cognition related to problem gambling, explaining how this might be linked to an offence (Smith and Simpson, 2014). Several US states and some areas of southern Australia have piloted the use of problem-solving courts for low-level crimes. These problem-solving courts aim to address offending behaviour related to problem gambling through therapeutic intervention in conjunction with suspended sentences (Guenaga, 2011; Turner et al, 2017; Adolphe et al, 2019). Problem-solving courts in the USA have been found to reduce recidivism, whilst ensuring that people receive the treatment they need (Turner et al, 2017). They also provide an alternative to prison, where overcrowding has been a concern (ibid).

Research aims

This research was commissioned by the Howard League for Penal Reform in association with the Magistrates Association (MA) to support the work of the Commission on Crime and Problem Gambling. The focus of the research was to:

- Understand the extent to which sentencers in England and Wales are aware of problem gamblers coming before them in court.
- Understand sentencers' practice when problem gambling is apparent within a case.
- Elicit sentencers' views on the potential for courts to account for problem gambling.

The research was undertaken with sitting magistrates and relevant stakeholders.

Research methodology

A participatory, collaborative model (Page and Temple-Malt, 2018) was utilised to develop the research design and questions. This approach was adapted from Staffordshire University's participatory model which emphasises values of creativity, involving others, listening and learning, cross checking, and action planning (Gratton and Beddows, 2018). The research advisory group included a magistrate and researchers from Staffordshire University, alongside representatives from the Howard League for Penal Reform and the Magistrates Association. This collaborative team also worked with the Magistrates Association's Adult Court Policy Committee to review and enhance the process.

To address the research aims, data was collected in three ways:

1. Online survey: the research team conducted an online survey of members of the Magistrates Association. A total of 656 people took part in the survey, which asked participants to reflect on their experience of gambling as encountered in court cases, as well as their thoughts on gambling and sentencing guidelines. Participants were from all regions in England and Wales and were all over 50 years of age, with a relatively equal distribution of men and women. This was a fairly representative sample of magistrates in England and Wales.

2. Focus groups: the research team conducted a series of online focus groups with 26 magistrates who had participated in the online survey. Focus groups provided an opportunity to discuss the topic and findings of the survey in greater depth, with the aim of gaining a more nuanced understanding of the survey data.

3. Online stakeholder word café event: the research team held an online event utilising world café methodology (Brown and Issacs, 2005; Page and Temple-Malt, 2018; Page et al, 2020; Page, 2020). This enabled the research team to gain further insights and solutions from a range of leaders within the criminal justice system and therapeutic community. A total of 21 stakeholders took part, representing a range of sectors and organisations.¹

Theoretical thematic analysis as outlined by Braun and Clark (2006) was used to process the qualitative data sets, supported by a review of existing literature and policy documents. SPSS software was used to analyse and cross-check the quantitative findings from the online survey data.

The research was approved by the Staffordshire University ethics committee. Principles of confidentiality, anonymity, informed consent, right to withdraw and debrief were applied in line with ethical guidance from the British Society of Criminology and British Sociological Association (British Society of Criminology, 2015; British Sociological Association, 2017). Participatory and collaborative research allowed for ongoing scrutiny and quality assurance by relevant stakeholders.

Findings

The core findings for this research illustrated magistrates' levels of awareness of problem gambling and current practice when sentencing someone with an identified problem gambling issue, as well as recommendations for improvements to sentencing practice that relate to the criminal justice system more broadly.

Sentencers' awareness of problem gambling

- Most magistrates surveyed had an average understanding of problem gambling. Some drew on personal and general knowledge, whilst others reflected on their court room experience of sentencing cases involving problem gambling.
- Concerns were raised by magistrates and therapeutic stakeholders about the pervasiveness of gambling advertising in society. Incentives to gamble and early exposure to gambling were identified as possible precursors to problem gambling. The views of focus group respondents suggested that online gambling opportunities had the potential to facilitate under-age gambling. Magistrates highlighted the need for more responsible practice from the gambling industry to safeguard young people and those addicted to gambling. Stakeholders queried the ways in which financial services could also safeguard vulnerable groups.

¹ Delegates attended from: The Sentencing Council, public health, debt advice services, academics representing the lived experience voice, GamCare, the police, the Justice Clerks' Society, the Bar Council, the Law Society, Liaison and Diversion, the Probation Institute, Gambling Integrity, Refuge, Gamble Aware and Beacon Counselling.

- Magistrates shared insights about problem gambling from their experiences in adult criminal and family courts. Problem gambling did not come up frequently in criminal cases, but magistrates and stakeholders agreed that it was likely to be a hidden rather than non-existent issue. Of those magistrates surveyed, 54.4 per cent said that problem gambling had never come up in a court hearing.
- Whilst gambling knowledge varied, good understanding about drug and alcohol addiction was apparent, and informed magistrates' responses. 93 per cent of survey participants perceived gambling as an addiction similar to drugs and alcohol.
- Neurological impacts of problem gambling were less well understood, a factor which magistrates and stakeholders felt could have implications for sentencing practice regarding evidencing how problem gambling impacts decision making relating to offending behaviour. Without the development of a mainstream understanding across the criminal justice service, defence lawyers would be unlikely to raise gambling in court as a mitigating factor.
- Therapeutic stakeholders were aware of evidence of how gambling affects the brain (see Leeman and Potenza, 2012; Pettorruso et al, 2019; Zhang and Clark, 2020; Goudriaan, 2020). This knowledge needs to be translated into the criminal justice sector to improve understanding and inform practice.
- Participants agreed that training was needed for magistrates (and the wider criminal justice sector) about awareness of gambling behaviour, problem gambling, gambling related harm and its links to crime and criminality. Research findings suggested that training should include the voices of those with lived experience of problem gambling.
- Awareness of a defendant's problem gambling issues might be communicated (albeit in varying degrees) by the defence solicitor and/or the pre-sentence report written by a probation officer. Criminal justice stakeholders described how some police forces, probation officers and liaison and diversion staff were beginning to identify problem gambling and refer people to appropriate agencies. However, findings revealed current inconsistencies in knowledge levels and good practice. Overall, it was perceived that gambling screening and treatment referral is not mainstream.
- Magistrates who participated in the research highlighted that there was insufficient information gathered by the probation service regarding their client's issues with problem gambling and whether this might lead to further offending. The OASys assessment used by probation to complete the pre-sentence report does not specifically ask the defendant about problem gambling in this context (except in regard to debt management). Magistrates and criminal justice stakeholders welcomed such screening, along with earlier identification by the police and liaison and diversion.
- Magistrates, criminal justice and therapeutic stakeholders described how people with problem gambling issues are not always forthcoming about their gambling involvement. There should be systematic recognition of problem gambling among criminal justice professionals, and training about how to support people with disclosure.

Sentencing practice and criminal justice treatment provision

- Surveyed magistrates identified the types of crimes being committed in court cases where problem gambling was a contextual factor: 25.7 per cent of responders recalled that the cases involved theft; 14.6 per cent recalled that the cases involved unauthorised credit cards; 11.4 per cent recalled that the cases involved domestic violence; 3 per cent recalled that the cases involved assault; 2.7 per cent recalled that the cases involved street robbery; 1.7 per cent recalled that the cases involved public order offences; and 0.6 per cent recalled that the cases involved child abuse. They recalled that it was rare for problem gambling to be raised in a case, in contrast with other addictions such as alcohol and drugs which were raised regularly in court sittings.

- Magistrates rely on sentencing guidelines. Survey participants showed a preference for more sentencing guidance on problem gambling (58.1 per cent). Magistrates who participated in the focus groups, as well as stakeholders, supported the idea that sentencing guidelines should recognise when gambling should be considered as an aggravating or mitigating factor.
- Presently, mitigation can only be applied if the defendant has voluntarily taken steps to address their problem gambling in cases where the court establishes a direct causal relationship between gambling and the offence. Under current sentencing guidelines, magistrates can ban an individual from attending or using gambling facilities, including online gambling sites. However, findings from magistrates' responses suggested that there was a degree of uncertainty regarding their power to do this.
- Recalling their experience of gambling related crime cases, participants recognised that in many cases where fraud or theft was committed, it was over the financial threshold that could be dealt with at the magistrates' court. These cases were referred upwards to the crown court. It was suggested that these cases could be dealt with in the magistrates' court if they were given the authority. Magistrates and stakeholders acknowledged how gambling debts could swiftly spiral out of control. They reported incidents where first time offences involved theft from workplaces of hundreds of thousands of pounds. Magistrates recalled that these cases often involved defendants who were in court for the first time and had previous good character. This was presented as another reason to enable these cases to remain in the magistrates' court.
- Of the magistrates surveyed with experience of sentencing cases where problem gambling was a contextual factor, 25.5 per cent noted that the defendant was also unemployed. Focus group and stakeholder participants mostly referred to cases where crimes were committed by employed people in positions of trust. Connolly et al (2018) found that the connection between unemployment and problem gambling was higher than was recognised by magistrates. This difference could be explained due to the way in which crime type can influence the likelihood of reporting (Tarling and Morris, 2010); employers may be more likely to prosecute due to the sums of money stolen, thus these cases may appear more frequently in court.
- Participants were asked to reflect on the demographics of people they had seen at court in cases involving problem gambling. Survey data revealed that magistrates most commonly recalled seeing white male defendants aged 30 years and over in these cases. There was significantly less recognition of cases involving women and people from Black and minority ethnic backgrounds. Therapeutic stakeholders had more experience of women attending their services, compounding findings that problem gambling is rarely raised or recognised in court.
- Survey participants recalled that people presenting in court with problem gambling issues also experienced the following: 56.7 per cent recalled financial difficulties such as debt; 31.2 per cent recalled alcohol addiction; 29.9 per cent recalled relationship breakdown; 21.5 per cent recalled drug addictions; 20.5 per cent recalled job loss; 17.4 recalled poor mental health; and 5.7 per cent recalled adverse childhood experiences.
- Magistrates in the focus groups preferred therapeutic intervention as part of a community sentence. This was as opposed to a custodial sentence or fine, which were seen as having the potential to exacerbate gambling, offending behaviour, and any incurred debt issues. Acknowledging that some offences would pass the custody threshold based on the sentencing guidelines, findings suggested that magistrates also welcomed better access to treatment in custody. Magistrates highlighted their obligation to be mindful of compensation to and justice for the victim, as well as the promotion of safer communities.
- Findings suggested that financial penalties as a sentence were considered problematic. Despite being the lowest level sentence,

participants suggested that it could lead to further financial problems, gambling, and criminal involvement. Magistrates felt that this sentence needed to be reviewed. However, detailed pre-sentence reports are not required for low level crimes (Chaplin et al, 2017) and such crimes are more likely to result in a fine. Therefore, problem gambling might not be identified prior to the court case by probation and as such would not come to the attention of sitting magistrates.

- 14 per cent of survey respondents were aware of a treatment service in their locality to which someone identified with problem gambling issues could be referred. Therapeutic stakeholders pointed out that criminal justice staff needed a greater awareness of gambling treatment services already available, for example the National Gambling Treatment Service (including GamCare and their network partners), as well as online, remote provision and the National Gambling Helpline.
- Magistrates wanted to be confident that gambling issues would be addressed by bespoke courses provided or endorsed by probation, delivered by experts using evidence-based approaches. They also recognised the potential need for debt management guidance and mental health support and felt that people needed appropriate interventions to meet individual needs. Magistrates and stakeholders highlighted a link between domestic abuse and problem gambling, suggesting that there is also a need for healthy relationship education intervention. Therapeutic stakeholders highlighted that women may have slightly different treatment needs to men. Probation officers could assign Rehabilitation Activity Requirement (RAR) days to gambling-specific interventions as part of a community sentence.
- Probation officers were regarded as being well placed to identify intervention needs, with the support of training from experts in therapeutic services. A multi-agency approach to meeting gambling related need was perceived as best practice.
- Magistrates recognised that resource limitations in the criminal justice system

could hinder the opportunities for treatment and rehabilitation. They agreed that robust information about prevalence should inform future service delivery developments and resource allocation.

Recommendations

Crime prevention and community safety

- The research presents a compelling case for adopting a public health approach (McGee, 2020; Purves et al, 2020) that places greater restrictions on advertising and online gambling provision to safeguard children, people experiencing problem gambling, and people at risk of gambling related harms.
- There needs to be improved awareness of and signposting to gambling treatment services among professionals in the criminal justice system, including services for affected others within the community.
- More awareness of and greater support for victims of gambling related crime is needed, as well as providing the opportunity for victims and affected others to articulate the impacts that crime and problem gambling has had on them. It is plausible that the private and interpersonal nature of common gambling related crimes such as theft from family members or friends and domestic violence contribute to the hidden nature of gambling related crime. Not all victims want criminal justice involvement and, in such instances, appropriate support and treatment should still be made available. The adoption of restorative justice practices in the community, outside of the criminal justice system, could reduce the need for future criminal justice involvement.
- As a further community safety measure, engagement with financial services providers would be beneficial in exploring the kind of safeguards that could be put in place to protect vulnerable customers and those in debt.

Sentencing guidance, sentencing and associated training

- The research findings support the need for amendments to sentencing guidelines to include problem gambling as a mitigating or aggravating factor. Associated training should be provided to magistrates.
- There should be a review of the financial thresholds for acquisitive/ fraudulent crimes that can be dealt with at the magistrates' court.
- A review of the use of fines is needed with recognition to when pre-existing debts feature in a case.
- Bespoke gambling treatment options in the criminal justice system are needed to support suspended sentences, community sentences, and treatment in prison. The research found that magistrates and therapeutic stakeholders agreed that custodial sentences were not effective when therapeutic intervention was required.

Criminal justice practice

- An understanding of problem gambling, gambling related harms, the neurocognitive impacts of gambling and the prevalence of such issues when investigating crime is essential for probation practitioners, liaison and diversion staff, the police and wider criminal justice professionals including sentencers. Useful resources include research by GamCare (2021) and the Beacon Counselling Trust (Mann, 2018).
- Early identification and diversion are key. Referral pathways tailored to problem gambling treatment should be introduced by police and liaison and diversion teams.
- Probation and liaison and diversion services should use a gambling screening tool and use this information when assessing a person's risk of reoffending. Pre-sentence reports should include this information and signpost to treatment and support intervention.
- Where problem gambling is identified, it would be advantageous to include in-depth assessment from therapeutic professionals

working in the field to support with evidence for mitigation and identify further referral pathways.

- Magistrates advocated for experienced therapeutic and treatment providers to deliver criminal justice treatment interventions for problem gambling in the community. Tailored treatment and support programmes should contribute to rehabilitation activity requirement (RAR) days. Consideration and more research is needed into gender and culturally specific support pathways and therapeutic best practice.
- Training for magistrates and criminal justice professionals regarding problem gambling, behavioural addiction, gambling harms and sentencing options should be developed. The voices of those with lived experience of problem gambling including affected others, alongside shared knowledge from the therapeutic field, would enhance criminal justice practice.

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About the Commission on Crime and Problem Gambling

The Commission on Crime and Problem Gambling was launched by the Howard League for Penal Reform in 2019 and is scheduled to run until the end of 2022.

The Chair of the Commission is Lord Peter Goldsmith QC. He leads a team of 16 Commissioners, comprising of academics and professionals with expertise in the criminal justice system and public health, as well as experts with knowledge of the gambling industry and with lived experience of addiction.

The Commission seeks to answer three questions:

- What are the links between problem gambling and crime?
- What impact do these links have on communities and society?
- What should be done?

About the Howard League for Penal Reform

The Howard League for Penal Reform is a national charity working for less crime, safer communities and fewer people in prison. We campaign and research on a wide range of issues including short term prison sentences, real work in prison, community sentences and youth justice. We work with parliament and the media, with criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change to create safer communities.

Our legal team provides free, independent and confidential advice, assistance and representation on a wide range of issues to young people under 21 who are in prisons or secure children's homes and centres. By becoming a member, you will give us a bigger voice and give vital financial support to our work. We cannot achieve real and lasting change without your help.

Please visit www.howardleague.org and join today.

About the Magistrates Association

The Magistrates Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 14,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy. Please visit

<https://www.magistrates-association.org.uk/>.

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Sarah Page is a Senior Lecturer in Sociology and Criminology at Staffordshire University and is the Co-Director of the Staffordshire University Crime and Society Research Group. She also has research links to the Staffordshire University Centre for Crime, Justice and Security and the Centre for Health and Development. Sarah comes from a practitioner background, working therapeutically in youth offending services and probation to address addictive behaviour. She then moved into strategic management within the statutory sector to assist partnerships in tackling health and social inequalities. Sarah mostly conducts qualitative and participatory research into addictions (drugs, alcohol and gambling), victimology (domestic violence, sexual offences, human trafficking and hate crime), tackling poverty (health and social inequalities), offending behaviour (youth justice), prisons and community arts.

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